

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 227 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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KANTILAL JASARAJBHAI

Versus

STATE OF GUJARAT  
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Appearance:

MR PV HATHI for Petitioner

MR VB GHARANIA, AGP for Respondent No. 1  
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CORAM : MR.JUSTICE J.R.VORA

Date of decision: 11/08/2000

ORAL JUDGEMENT

1. This Appeal is filed by the appellant i.e.  
original plaintiff in Civil Suit No. 23 of 1978, of the  
Court of Civil Judge (SD), Amreli, against the judgment  
and order of learned Assistant Judge, Amreli in Regular

Civil Appeal No. 12 of 1982, dismissing the appeal of the original plaintiff filed against the judgment and order of the Civil Judge (SD), Amreli, of the above mentioned Regular Civil Suit No. 23 of 1978.

2. The brief facts giving rise to the present Appeal, may be stated as under :

3. The appellant - original plaintiff purchased one "Wada" land from one Vaghri Chhaganbhai Ghusabhai, by Registered Sale Deed dated 10th July, 1972 for Rs. 10,000/-. The plaintiff was put in possession of the said land, and in pursuance of this sale, plaintiff started Ginning Mill and factory in the above said land. Thereafter, the present plaintiff i.e. Appellant received a Notice from the Land Acquisition Officer under the Land Acquisition Act Section 12(2) on 2nd May, 1977 and in pursuance of this Notice, the plaintiff knew that the acquisition proceedings regarding the above said wada land had already commenced and culminated in an award, in the Land Acquisition Case No. 55 of 1974. The contention of the plaintiff - appellant was in the suit that he was the legal owner of the said land and that he was not served with the Notice under Section 4 of the Act. Necessary revenue entries also have been made in the revenue record regarding the ownership of the appellant plaintiff of the said land. On this strength, the plaintiff filed suit for a declaration that the proceedings under the Land Acquisition Case No. 55 of 1974 be held illegal and void from commencement to the passing of the award. An injunction was also sought to restrain the defendant from taking the possession of the land. The learned trial judge came to the conclusion that the suit was required to be dismissed and that Notice under Section 4(1) of the Act was duly published and deemed to be served to the plaintiff. Against this judgment and decree dated 17.12.1981, an Appeal was preferred by the plaintiff to the District Court, Amreli, being Regular Civil Appeal No. 12 of 1982, which came to be decided by Assistant Judge, Amreli, after hearing the parties, and Assistant Judge, Amreli also dismissed the Appeal and confirmed the judgment and decree of the trial court. This order is dated 19th April, 1983. Being aggrieved by the above said judgment and order of Assistant Judge, Amreli, this Second Appeal is filed by the original plaintiff.

4. While admitting the Appeal, this Court framed the following substantial questions of law:

" Whether the learned Judge committed a substantial error of law in holding that the Land Acquisition proceedings taken under Section 4, 6 and 9 are not void and illegal even though no notice was issued to the appellant owner of the land. "

5. Learned Counsel Mr. Mehta for learned Advocate Mr. P.V. Hathi for the appellant and learned AGP Mr. V.B. Gharaniya were heard at length.

6. The real question of law which arises for determination of this Appeal is whether the suit itself as has been filed by the present appellant at all maintainable? Undoubtedly and admittedly the suit i.e. Regular Civil Suit No. 23 of 1978 was filed to challenge the land acquisition proceedings under Land Acquisition Act. Therefore, the question arises in this Appeal is whether the Civil Court had jurisdiction to entertain the suit, to challenge the validity and legality of the acquisition proceedings taken under the Land Acquisition Act. The direct ruling on this point is of the Apex Court in the matter of STATE OF BIHAR v. DHIRENDRA KUMAR, reported in AIR 1995 SC 1955, wherein the Hon'ble Apex Court has in clear terms propounded that the power of the Civil Court to take cognizance of the case under Section 9 of CPC stands excluded and the Civil Court has no jurisdiction to go into the validity or legality of the Notification under Section 4 and declaration under Section 6, except by the High Court in a proceedings under Article 226 of the Constitution of India. The Apex Court in the above said decision in Para 2A observed as under :

The question is whether a civil suit is maintainable and whether ad interim injunction could be issued where proceedings under the Land Acquisition Act was taken pursuant to the notice issued under S.9 of the Act and delivered to the beneficiary. The provisions of the Act are designed to acquire the land by the State exercising the power of eminent domain to serve the public purpose. The State is enjoined to comply with statutory requirements contained in S.4 and S.6 of the Act by proper publication of notification and declaration within limitation and procedural steps of publication in papers and the local publications envisaged under the Act as amended by Act 68 of 1984. In publication of the notifications and declaration under S.6, the public purpose gets crystallised and becomes

conclusive. Thereafter, the State is entitled to authorise the Land Acquisition Officer to proceed with the acquisition of the land and to make the award. Section 11-A, now prescribes limitation to make the award within 2 years from the last of date of publication envisaged under S.6 of the Act. In an appropriate case, where the Government needs possession of the land urgently, it would exercise the power under S. 17(4) of the Act and dispense with the enquiry under S.5-A. Thereon, the State is entitled to issue notice to the parties under S.9 and on expiry of 15 days, the State is entitled to take immediate possession even before the award could be made. Otherwise, it would take possession after the award under S.12. Thus, it could be seen that the Act is a complete code in itself and is meant to serve public purpose. We are, therefore, inclined to think, as presently advised, that by necessary implication the power of Civil Court to take cognizance of the case under S. 9 of C.P.C. stands excluded, and a civil Court has no jurisdiction to go into the question of the validity or legality of the notification under S. 4, and declaration under S.6, except by the High Court in a proceeding under Article 226 of the Constitution. So, the civil suit itself was not maintainable. When such is the situation, the finding of the trial court that there is a prima facie triable issue is unsustainable. Moreover, possession was already taken and handed over to Housing Board. So, the order of injunction was without jurisdiction."

7. In view of this established law, civil suit filed by the plaintiff to challenge a proceedings under the Land Acquisition Act was not maintainable meaning thereby that the Civil Court has no jurisdiction to entertain the suit itself. Therefore, the Second Appeal on the ground of maintainability itself must fail.

8. While hearing of the Appeal, learned counsel Mr. Mehta for the appellant made a statement that in pursuance of the land acquisition proceeding, the Land Acquisition Officer has not still acquired the land in question nor the competent authority has declared their intention that whether the land in question was still required for the said acquisition. Mr. Mehta stated some subsequent changes and also stated that this subsequent changes may lead the plaintiff to believe that the Government does not intend to acquire the above said

land. Mr. Mehta also drawn attention of this Court to the representation made by the plaintiff to the Collector, Amreli, and the representation is dated 18.4.2000.

9. For the aforesaid reasons, Appeal fails and the same stands dismissed with no order as to costs. However, in the facts and circumstances of this case, it is hoped that the competent authority shall consider and decide the representation of the plaintiff made on 18th April, 2000 to the Collector, District Amreli expeditiously.

(J.R. Vora, J.)

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p.n.nair